

JIM IRVIN
COMMISSIONER-CHAIRMAN

TONY WEST
COMMISSIONER

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COMMISSIONER

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION
AZ CORP COMMISSION

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ORIGINAL

DOCUMENT CONTROL
MEMORANDUM

TO: Commissioner-Chairman Jim Irvin
Commissioner Tony West
Commissioner Carl J. Kunasek

FROM: Mark Sendrow *MS*
Director of Securities

DATE: March 22, 1999

RE: Proposed Rules A.A.C. R14-6-101 through R14-6-212
Investment Management Rules
Docket No. RS-00000A-98-0240

CC: Stuart R. Brackney, Acting Executive Secretary

Arizona Corporation Commission
DOCKETED

MAR 22 1999

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INTRODUCTION

The Securities Division (the "Division") is recommending that the Corporation Commission (the "Commission") amend the rules governing the Arizona Investment Management Act (the "IM Act") and is seeking approval to submit a notice of proposed rulemaking with the secretary of state.

DISCUSSION

The IM Act (A.R.S. § 44-3101 *et seq.*) regulates the activity of investment advisers and their representatives. The Commission has adopted a number of rules to administer the IM Act. Those rules are found at A.A.C. R14-6-101 through R14-6-209 (the "IM Rules"). The Division recommends that the IM Rules be repealed and replaced, as well as supplemented with four new rules (A.A.C. R14-6-106, R14-6-210 through R14-6-212), in order to address a number of relatively recent developments. In particular, the recommended rulemaking is intended to accomplish the following:

1. Acknowledge, and conform with, certain provisions of the federal National Securities Markets Improvement Act of 1996 and rules promulgated thereunder by the Securities and Exchange Commission.

2. Provide instruction for investment advisers and investment adviser representatives who wish to advertise on the Internet. (See A.A.C. R14-6-106)
3. Clarify the statutory definition of "investment adviser representative." (See A.A.C. R14-6-210)
4. Provide guidance concerning the term "solicit," as used in the IM Act. (See A.A.C. R14-6-211)
5. Clarify the filing requirements for licensure and notice filing. (See A.A.C. R14-6-212)
6. Make certain technical and grammatical changes.

Procedurally, the Division recommends that the current IM Rules be repealed and replaced (as opposed simply to amended) by new rules. The Division recommends the "repeal-replace" procedure because, when the IM Rules first were adopted, the Commission's procedures for Division rules did not include certification from the attorney general's office. The Commission now seeks approval from the attorney general's office for all Division rules, in accordance with A.R.S. § 41-1044. To reflect the Commission's current rulemaking practice concerning Division rules, a practice fully-endorsed by the Division, the Division believes that repealing and replacing the current IM Rules, rather than amending them, is the prudent procedural mechanism for effectively "amending" the current IM Rules.

Attached for your review are two documents. First, a black-lined version of the proposed amendments and new rules, which clearly indicates the Division's recommended changes and additions. Second, a copy of the notice of proposed rulemaking that the Division will file with the secretary of state.

CONCLUSION

The Division solicited and received informal comments from the attorney general's office and the Rules Committee of the Arizona State Bar's Securities Section. With the filing of the notice of proposed rulemaking, the Commission may proceed forward by providing notice to stakeholders and by holding a public comment hearing. To that end, the Division requests that the Commission issue an order that allows the Division to submit the notice of proposed rulemaking to the secretary of state and directs the Hearing Division to set a hearing date.

Originator: Cheryl T. Farson
Asst. AG Assigned: Robert Zumoff

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS
AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 6. INVESTMENT MANAGEMENT

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ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA
INVESTMENT MANAGEMENT ACT

R14-6-101. Definitions

- A. The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 shall apply to the rules promulgated under A.R.S. title 44, chapter 13.
- B. The following definitions shall apply to all rules promulgated under A.R.S. title 44, chapter 13, unless the context otherwise requires:
- ~~1. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.~~
 12. "Advertisement" means, except as set forth in subsections (d) and (e), any notice, circular, letter, or other written, oral, or electronically-generated communication addressed to or reasonably designed by the investment adviser or investment adviser representative to be accessed by more than 1 person, or any notice or other announcement in any publication or by radio or television, that ~~which~~ directly or indirectly offers:
 - a. Any analysis, report, or publication that either concerns ~~concerns~~ securities, or ~~which is~~ to be used in making any determination as to when to buy or sell any security; or which security to buy or sell; or
 - b. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
 - c. Any other investment advisory service with regard to securities; or
 - d. A communication over a computer on-line service including, but not limited to, an electronic bulletin board shall not be deemed to be an advertisement when an investment adviser or an investment adviser representative is either:

- i. Engaged in a discussion regarding securities and does not receive compensation from any person for the discussion; or
 - ii. Responds to unsolicited inquiries regarding the provision of investment advisory services.
 - e. A communication by 1 or more investment advisers or investment adviser representatives shall not be deemed to be an advertisement when the communication is addressed solely to or is reasonably designed to be accessed solely by other investment advisers or investment adviser representatives.
23. "Certified public accountant" or "CPA" means an accountant who has been registered or licensed to practice public accounting and is permitted to use the title "certified public accountant" and to use the initials "CPA" after the accountant's name.
4. ~~"Chapter 13" means A.R.S. title 44, chapter 13.~~
5. ~~"Commodity Exchange Act" means 7 U.S.C. 1 et seq. (1988 & Supp. V 1993), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of state. Copies of the Commodity Exchange Act are available from the Securities Division of the Corporation Commission and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~
6. ~~"Division" means the Securities Division of the Corporation Commission.~~
3. "Federal covered adviser" means an investment adviser registered under the investment advisers act of 1940.
47. "Fixed fee basis" means an investment advisory fee that which at any given time can be precisely established in a dollar amount without regard to the investment performance or value of an account and that which is not based on the purchase or sale of specific securities.
58. "Form ADV" means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1 (1998-1994) (Form amended at 59 FR 21657 (1994) and 59 FR 27659 (1994)), ~~which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of state. Copies of Form ADV are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~
6. "TM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.
79. "Impersonal advisory services" means investment advisory services provided solely:
- a. By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

- b. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
 - c. Any combination of the foregoing services.
8. "Internet" means all proprietary or common carrier electronic systems, or similar media.
9. "Internet communication" means the distribution of information on the Internet.
10. "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate, including but not limited to acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or fiduciary.
11. "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.
12. "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.
- ~~13~~10. "NASAA" means the North American Securities Administrators Association, Inc., or any successor organization.
- ~~14~~11. "NASD" means the National Association of Securities Dealers, Inc., or any successor or subsidiary organization.
- ~~15~~12. "Relative" means any relationship by blood, marriage, or adoption, not more remote than 1st cousin.
- ~~16~~13. "Rule 204-2" means United States securities and exchange commission rule 204-2, 17 CFR 275.204.2 (1994), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the office of the secretary of state. Copies of Rule 204-2 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
- ~~14~~. "Rule 204-3" means United States Securities and Exchange Commission Rule 204-3, 59 FR 21661 (1994) (to be codified at 17 CFR 275.204.3), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Rule 204-3 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
- ~~17~~15. "SEC" means United States Securities and Exchange Commission.
- ~~18~~16. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*

19. "Self-regulatory organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.

~~2017.~~ "Unincorporated organization" includes a limited liability company for purposes of the definition of "person," as defined in A.R.S. § 44-1801(13).

21. "Wrap fee program" means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services, which may include portfolio management or advice concerning the selection of other investment advisers, and execution of client transactions.

R14-6-102. Scope of provisions this Article

The following Sections ~~rules~~ are adopted by the Commission under the authority granted pursuant to A.R.S. title 44, chapter 13. ~~Such Sections~~ All rules shall be generally applicable to the administration of the IM Act, but the Commission may at any time abrogate or waive strict adherence to any particular provision when rule in any specific instance where the Commission deems may deem it advisable for the equitable administration of the law. When not in conflict with these Sections ~~rules~~, the applicable provisions of A.A.C. R14-3-101 through R14-3-113 also shall apply.

R14-6-103. Severability

The provisions of the Sections ~~rules~~ promulgated under A.R.S. title 44, chapter 13, are severable. If any provision of a Section ~~rule~~ is held to be invalid, such invalidity shall not affect other provisions that ~~which~~ can be given effect without the invalid provision.

R14-6-104. Enforcement of the Arizona Investment Management Act

The provisions ~~rules~~ relating to investigations and examinations conducted pursuant to and orders issued under the IM Act are contained at A.A.C. R14-4-301 through R14-4-308.

R14-6-106. General dissemination of information on the Internet

A. Investment advisers and investment adviser representatives who use the Internet to distribute information on products and services directed generally to anyone having access to the Internet shall not be deemed to be transacting business in Arizona for purposes of Article 4 of the IM Act based solely on that activity if the following conditions are observed:

1. The Internet communication includes clear and prominent statements that:
 - a. The investment adviser or investment adviser representative may only transact business in Arizona if first compliant with or exempt from licensure or notice filing requirements.
 - b. The investment adviser or investment adviser representative may only communicate with persons in Arizona individually about effecting or attempting

to effect transactions in securities, rendering investment advice for compensation, or soliciting or negotiating for the sale of investment advisory services if first compliant with or exempt from licensure or notice filing requirements.

2. The investment adviser or investment adviser representative complies with the statements contained in the Internet communication under subsection (A)(1).
3. The Internet communication is subject to a mechanism, policy, or procedure reasonably designed to ensure that, prior to any subsequent, direct communication with prospective customers or clients in Arizona, the investment adviser or investment adviser representative is first compliant with or exempt from the licensure or notice filing requirements of the IM Act.
4. The Internet communication does not involve either effecting or attempting to effect transactions in securities, the rendering of investment advice for compensation, or individualized solicitation or negotiations for the sale of investment advisory services in Arizona.
5. In the case of an investment adviser representative:
 - a. The affiliation with an investment adviser is prominently disclosed in the Internet communication.
 - b. The investment adviser with whom the investment adviser representative is associated first authorizes the Internet communication.
 - c. The investment adviser with whom the investment adviser representative is associated retains responsibility for reviewing and approving the content of any Internet communication.
 - d. In distributing information through the Internet, the investment adviser representative acts within the scope of the authority granted by the investment adviser.

- B. Compliance with this Section relieves the investment adviser or investment adviser representative of licensure or notice filing requirements only. The investment adviser or investment adviser representative are subject to Article 9 of the IM Act and related regulations.

ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

R14-6-201. Books and records of investment advisers-Records of Investment Advisers

- A. Except as provided in subsection (G), each Each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve books and records in accordance with the requirements imposed on federal covered advisers under compliance with rule 204-2. The investment adviser shall concurrently file with the Commission

~~commission~~ a copy of any notices or written undertakings required to be filed by federal covered advisers with the SEC under rule 204-2.

- B. To the extent that the SEC amends rule 204-2, investment advisers in compliance with the requirements contained in rule 204-2 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the requirements contained in the amended rule 204-2.
- C. ~~As of the effective date of this Section,~~ Except as provided in subsection (G), each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve for at least 5 years the following additional books and records:
1. A file containing each customer complaint received relating to advisory activities conducted by the investment adviser, its investment advisory representatives, or its employees, and all correspondence relating to such complaint.;
 2. A file containing all advertisements used by the investment adviser or any investment adviser representative, including any radio or television transcripts and advertisements placed on computer or electronic bulletin boards.;
 3. In each client file, all correspondence received or sent by the investment adviser, any investment adviser representative, or any employee, that related to any client account, securities, or funds.
- D. Books and records that are required to be maintained pursuant to subsection (A) shall be available for inspection by the ~~Commission~~ commission in accordance with the provisions of rule 204-2. Books and records that are required to be maintained pursuant to subsection (C) shall be readily accessible and may be preserved in accordance with rule 204-2(g). Notwithstanding other record preservation requirements of this Section, the following records or copies shall be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:
1. Records required to be preserved under rule 204-2(a)(3), (a)(7) through (10), (a) (14 through (15), (b), and (c).
 2. Records required to be preserved under subsection (C) of this Section.
- E. A record made and kept under a provision of subsections (A) or (C) that contains all of the information required under any other provision of subsections (A) or (C) in a readily accessible format need not be maintained in duplicate in order to meet the requirements of the other provision.
- F. Any book or other record made, kept, maintained, and preserved in compliance with A.A.C. R14-4-132 that is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this Section shall be deemed to be made, kept, maintained, and preserved in compliance with this Section.

G. Every investment adviser licensed or required to be licensed in Arizona that has its principal place of business in a state other than Arizona shall be exempt from the requirements of this Section, provided the investment adviser is licensed in such other state and is in compliance with that state's recordkeeping requirements.

R14-6-202. Supervision

For purposes of A.R.S. § 44-3201(A)(12), no investment adviser shall be deemed to have failed to reasonably supervise its investment adviser representatives or employees if:

1. The investment adviser has ~~There have been~~ established and maintained written procedures, and a system for applying such procedures, that ~~which would~~ reasonably may be expected to prevent and detect, insofar as practicable, any violation of the IM Act or any rule adopted thereunder by such investment adviser representatives or employees ~~of the IM Act, or any rule adopted thereunder;~~ and
2. Such investment adviser has reasonably discharged reasonably the duties and obligations incumbent upon it by reason of such procedures and system without reasonable cause to believe that the investment adviser representatives or employees are not complying with such procedures and system ~~were not being complied with.~~

R14-6-203. Dishonest and unethical practices ~~Unethical Practices~~

A. Except as otherwise provided in subsection (B), "dishonest ~~"Dishonest and unethical practices",~~ with respect to investment advisers and investment adviser representatives under A.R.S. § 44-3201(A)(13), shall include; but not be limited to; the following:

1. Refusing to allow or otherwise impeding ~~designees of the Commission~~ from conducting an investigation or examination under the IM Act or any rule adopted thereunder;;
2. Placing an order to purchase or sell a security for the account of a client without authority to do so;;
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a 3rd party without first obtaining a written 3rd-party trading authorization from the client;;
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both;;
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;;
6. Borrowing money or securities from a client or client's account unless the client has authorized the borrowing in writing and is a dealer, an affiliate, or relative of the

investment adviser or investment adviser representative, or a financial institution or other entity engaged in the business of loaning funds or securities.;

7. Loaning money to a client unless the investment adviser or investment adviser representative is a financial institution or other entity engaged in the business of loaning funds or the client is an affiliate or relative of the investment adviser or investment adviser representative.;
8. Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, the investment adviser representative, or an employee, or misrepresenting the nature of the investment advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they were made, not misleading.;
9. Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render investment advice or where the investment adviser or investment adviser representative orders such a report in the ordinary course of providing service.;
10. Charging a client an investment advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser or the investment adviser representative, and the sophistication and bargaining power of the client, ~~and whether the investment adviser has disclosed that lower fees for comparable services may be available from other sources;~~
11. Failing to disclose to a client in writing before entering into or renewing an investment advisory agreement with that client, or before any investment advice is rendered, any material conflict of interest relating to the investment adviser, the investment adviser representative, or an employee that ~~which~~ could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:
 - a. Compensation arrangements connected with investment advisory services to clients that ~~which~~ are in addition to compensation from such clients for those services; and
 - b. Charging a client an investment advisory fee for rendering investment advice without disclosing that compensation for executing securities transactions pursuant to such investment advice will be received by the investment adviser, the investment adviser representative, or an employee.;
12. ~~Guaranteeing or promising or~~ Guaranteeing ~~or guaranteeing~~ a client that a gain, loss, or other outcome will be achieved as a result of the investment advice.;
13. Disclosing the identity, affairs, or investments of a client to any 3rd party unless required by law to do so, or ~~unless consented to by the client.;~~

14. With respect to any client initially retained after July 19, 1996, the effective date of this rule, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance, and that of any grant of any discretionary power to the investment adviser;
 15. With respect to any client initially retained after July 19, 1996, the effective date of this rule, entering into, extending, modifying, or renewing any investment advisory contract without disclosing, in writing to the client, any affirmative answers to disciplinary questions numbered 11A and 11K in Part I of the Form ADV;
 16. Entering into, extending, modifying, or renewing any investment advisory contract that which allows the assignment of such contract by the investment adviser without the prior written consent of the client;
 17. Committing any act that results in denial, revocation, or suspension by an agency of any state of a license or registration relating to securities by an agency of any state, where such denial, revocation, or suspension arises out of any scheme, act, practice, or course of business that operates or would operate as a fraud or deceit, or arises out of a violation of Article 13 of the Securities Act or the rules promulgated thereunder; and
 18. Failing to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. title 44, chapter 12.
1918. ~~For any investment adviser to, in any manner, request, or require, in any contract, agreement, or otherwise, any condition, stipulation, or provision binding on Requesting or requiring any person to waive compliance with any provision of the IM Act or the rules thereunder. Any such waiver shall be void.~~
- B. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-204. Written examination Examination

- A. Prior to licensure, except as provided in subsection (B), each investment adviser who is an individual and each investment adviser representative shall, ~~each of whom is hereafter referred to as an "applicant," must take and receive a score of at least 70% on:~~
1. The NASAA Series 65 Uniform Investment Adviser State Law Examination or Series 66 Combined State Law Examination; and
 2. The NASD Series 7 General Securities Registered Representative Examination or Series 2 General Securities Representative (Non-member) Examination.

- B. The examinations described in subsection (A)(2) shall not be required of an investment adviser or an investment adviser representative applicant who has completed and maintains 1 of the following credentials:
1. Certified Financial Planner (CFP) designation awarded by the Certified Financial Planner Board of Standards, Inc.;
 2. Chartered Financial Analyst (CFA) designation awarded by the Institute of Chartered Financial Analysts.;
 3. Chartered Financial Consultant (ChFC) designation awarded by the American College, Bryn Mawr, Pennsylvania.;
 4. Chartered Investment Counselor (CIC) designation awarded by the Investment Counsel Association of America, Inc.; ~~or~~
 5. Personal Financial Specialist (PFS) designation awarded by the American Institute of Certified Public Accountants.
- C. In the event that the NASAA or NASD Series examination numbers change, the most current examination series deemed applicable by the Commission to the category of licensure shall apply.
- D. In the event that the title changes for any of the credentials designated in subsection (B), the title deemed applicable by the Commission shall apply.

R14-6-205. Information to be furnished to clients~~Furnished to Clients~~ ("Brochure Rule")

- A. Each investment adviser licensed or required to be licensed under the IM Act shall ~~comply with the provisions of Rule 204-3~~ furnish each client and prospective client with a written disclosure statement that may be either a copy of Part II of its Form ADV or a written document containing at least the information required by Part II of Form ADV.
- ~~B. To the extent that the SEC amends Rule 204-3, investment advisers in compliance with Rule 204-3 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the amended Rule 204-3.~~
- B. The information required to be disclosed by subsection (A) shall be disclosed to clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.
- C. An investment adviser need not deliver the statement required by subsection (A) in connection with entering into an investment company contract or a contract for impersonal advisory services. The investment adviser shall, however, offer in writing to deliver the statement within 7 business days upon receipt of a written request.

- D. Without charge and to each of its clients, an investment adviser licensed or required to be licensed under the IM Act shall deliver annually within 7 business days upon receipt of a written request or offer in writing to deliver the statement required by this Section.
- E. If an investment adviser licensed or required to be licensed under the IM Act renders substantially different types of investment advisory services to different clients, any information required by Part II of Form ADV may be omitted from the statement furnished to the client or prospective client if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.
- F. Nothing in this Section shall relieve any investment adviser from any obligation pursuant to any provision of the IM Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this Section.
- G. An investment adviser licensed or required to be licensed under the IM Act that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the programs, shall, in lieu of the written disclosure statement required by subsection (A) and in accordance with the other subsections of this Section, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV. Any additional information included in such disclosure shall be limited to information concerning wrap fee programs sponsored by the investment adviser.
- H. If the investment adviser is required under subsection (G) to furnish disclosure statements to clients or prospective clients of more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.
- I. An investment adviser need not furnish the written disclosure statement required by subsection (G) to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

R14-6-206. Custody of client funds or securities by investment advisers ~~Client Funds or Securities by Investment Advisers~~

- A. Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to take or have custody of any securities or funds of any client unless:
1. The investment adviser notifies the Commission in writing that the investment adviser has or may have custody of client funds or securities. Such notification may be given on Form ADV.;

2. The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss.;
3. All client funds are deposited in 1 or more bank or similar accounts containing only clients' funds, such accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and the investment adviser maintains a separate record for each such account showing the name and address of the bank or similar institution where the account is maintained, the dates and amounts of deposits into and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.;
4. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and, subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client within prompt (but in no event more than 10 business days.) ~~written notice thereof to the client;~~
5. At least once every 3 months, the investment adviser sends each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of such period and all debits, credits, and transactions in the client's account during such period.;
6. At least once every calendar year, an independent CPA or public accountant verifies all client funds and securities by actual examination at a time chosen by the independent CPA or public accountant without prior notice to the investment adviser. The independent CPA's or public accountant's report stating that such CPA or public accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission within 30 calendar days promptly (but in no event more than 30 days) after the each such examination.

B. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-207. Suitability of investment advisory services ~~Investment-Advisory-Services~~

A. Except as otherwise provided in subsection (B), it ~~It~~ shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any person ~~providing investment advisory services to~~ provide investment advisory services to any client, other than in connection with impersonal advisory services, unless the person:

1. Before providing any investment advisory services, and as appropriate thereafter, makes a reasonable inquiry of the client as to the financial situation, investment experience, and investment objectives of the client; and

2. Reasonably determines that the investment advisory services are suitable for the client based upon the information obtained from the client in accordance with subsection (1) above.

B. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-208. Advertisements by investment advisers or investment adviser representatives
~~Investment Advisers or Investment Adviser Representatives~~

A. Except as otherwise provided in subsection (D), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement:

1. Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.; ~~or~~
2. Which refers, directly or indirectly, to past specific recommendations of the such investment adviser or investment adviser representative that which were or would have been profitable to any person; except that an investment adviser or investment adviser representative may provide, however, that this shall not prohibit an advertisement which sets out or offers to furnish or offer to furnish a list of all recommendations made by the such investment adviser or investment adviser representative within the immediately preceding period of not less than 1 year if the investment adviser or investment adviser representative also furnishes; if such advertisement, and such list if it is furnished separately:
 - a. The States the name of each such security recommended, the date and nature of each such recommendation (for example, whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security as of the most recent practicable date; and
 - b. The Contains the following cautionary legend on the 1st page thereof in prominent print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list;." ~~or~~
3. Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's his or her own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; ~~or~~

4. Which ~~represents, directly or indirectly, that contains any statement to the effect that~~ any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation, ~~directly or indirectly;~~
or
 5. Which states that the Commission has approved any advertisement.
- B. When requested by the Commission, any advertisement used directly or indirectly in connection with the provision of investment advisory services shall be filed with the Commission at least 10 business days prior to its proposed use.
- C. Any advertisement that has been requested by the Commission pursuant to the provisions of subsection (B) but that has not been filed with the Commission shall not be used.
- D. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-209. Financial and disciplinary information that investment advisers shall disclose to clients ~~Disciplinary Information that Investment Advisers Must Disclose to Clients~~

A. ~~The following definitions shall apply to this Section:~~

1. ~~"Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or fiduciary).~~
2. ~~"Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.~~
3. ~~"Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser which is a company or to determine the general investment advice given to clients.~~
4. ~~"Self-regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.~~

AB. Except as otherwise provided in subsection (F), it ~~It~~ shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over

~~such~~the client's funds or securities, or requires prepayment of advisory fees of more than \$500 from such client, 6 months or more in advance,~~; or~~

2. A legal or disciplinary event that is material to an evaluation of the investment adviser's or an investment adviser representative's integrity or ability to meet contractual commitments to clients.
3. A failure to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. title 44, chapter 12.

BC. It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser, an investment adviser representative, or a management person of the investment adviser (any of the foregoing being referred to hereafter as a "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subsection (AB)(2) for a period of 10 years from the time of the event. No affirmative or negative presumption of materiality shall be created under subsection (AB)(2) for events not specifically set forth in this subsection.

1. A criminal or civil action in a court of competent jurisdiction in which the person:
 - a. Was convicted, or pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
 - b. Was found to have been involved in a violation of an investment-related statute or rule; or
 - c. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person ~~from~~, or otherwise limiting the person ~~from~~, engaging in any investment-related activity.
2. An administrative ~~Administrative~~ proceeding before the SEC, Securities and Exchange Commission, ~~the Commission~~, or any federal or state ~~regulatory~~ agency ~~or any state agency~~ (any of the foregoing being referred to hereafter as "agency") in which the person:
 - a. Was found to have caused an investment-related business to lose its authorization to do business; or
 - b. Was found to have been involved in a violation of an investment-related statute or rule, and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.

3. ~~Self-regulatory Organization ("SRO")~~ proceedings in which the person:

- a. Was found to have caused an investment-related business to lose its authorization to do business; or
- b. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than \$2,500; or otherwise significantly limiting the person's investment-related activities.

CD. The information required to be disclosed by subsection (AB) shall be disclosed to clients within 30 calendar ~~promptly but in no event later than 30 days~~ after the occurrence of the event requiring disclosure, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.

DE. For purposes of calculating the 10-year period during which events are presumed to be material under subsection (BC), the date of the reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

EF. Compliance with subsection (BC) shall not relieve any investment adviser from the disclosure obligations of subsection (AB); compliance with subsection (AB) shall not relieve any investment adviser from any other disclosure requirement under the IM Act, the rules thereunder, or under any other state or federal law. ~~Note: Investment advisers may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under R14-6-205, provided, that the delivery of the brochure satisfies the timing of disclosure requirements described in subsection (CD).~~

F. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-210. Licensure of investment adviser representatives

A. The definition of investment adviser representative in A.R.S. § 44-1301 includes an individual employed by a federal covered adviser only if the individual has a place of business in Arizona and either:

1. Is a supervised person and meets all of the following conditions:

- a. Has more than 5 clients who are natural persons, other than excepted persons.
- b. Has clients more than 10% of whom are natural persons, other than excepted persons.

c. On a regular basis, solicits, meets with, or otherwise communicates with clients of the investment adviser or provides other than impersonal advisory services.

2. Is not a supervised person.

B. For purposes of this Section:

1. "Excepted person" means a natural person who:

a. Immediately after entering into the investment advisory contract with the investment adviser has at least \$500,000 under management with the investment adviser, or

b. The investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth, together with assets held jointly with a spouse, at the time the contract is entered into of more than \$1,000,000.

2. "Supervised person" means any partner, officer, director, or other person occupying a similar status or performing similar functions, or employees of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

3. "Place of business" means:

a. An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients, or

b. Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

C. A person that employs one or more investment adviser representatives who solicit, offer, or negotiate for the sale of or sell investment advisory services on behalf of an investment adviser shall license as an investment adviser unless each investment adviser representative is also employed by the investment adviser on whose behalf the activity is conducted.

R14-6-211. Solicitation

A. An individual shall not be included in the definition of investment adviser representative under A.R.S. § 44-3101(3)(d) if that individual meets both of the following conditions:

1. The individual does not on a regular basis give advice regarding, or recommend the services of, an investment adviser or an investment adviser representative.

2. The individual does not accept or receive directly or indirectly any commission, fee, or other remuneration in connection with a referral to or recommendation of the services of an investment adviser or an investment adviser representative.

B. The term "remuneration" shall be broadly construed, but shall not include the exchange of client referrals between professionals without an exchange of additional compensation.

C. No individual or entity subject to an order or finding that denies, revokes, or suspends licensure or registration under the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Securities Act, the IM Act, or the rules or regulations of an SRO may solicit, offer, or negotiate for the sale of or sell investment advisory services.

R14-6-212. Filing requirements

A. In addition to the items enumerated in A.R.S. § 44-3153(B), an application for licensure as an investment adviser shall include the following:

1. A notarized affidavit of any officer, director, partner, member, trustee, or manager of the applicant stating:

a. That a review of the records of the investment adviser has been conducted.

b. Whether any investment adviser activity has been conducted with residents of Arizona prior to licensure as an investment adviser.

2. If the applicant intends to have a branch office in Arizona, the address and name of a contact individual located at such branch.

B. A notice filing shall include the items enumerated in A.R.S. § 44-3153(D).

C. For purposes of A.R.S. § 44-3158(A), a license of an investment adviser or an investment adviser representative shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.

D. For purposes of A.R.S. § 44-3153(E), a notice filing shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 6. CORPORATION COMMISSION--INVESTMENT MANAGEMENT

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
A.A.C. R14-6-101	Repeal
A.A.C. R14-6-102	Repeal
A.A.C. R14-6-103	Repeal
A.A.C. R14-6-104	Repeal
A.A.C. R14-6-201	Repeal
A.A.C. R14-6-202	Repeal
A.A.C. R14-6-203	Repeal
A.A.C. R14-6-204	Repeal
A.A.C. R14-6-205	Repeal
A.A.C. R14-6-206	Repeal
A.A.C. R14-6-207	Repeal
A.A.C. R14-6-208	Repeal
A.A.C. R14-6-209	Repeal
A.A.C. R14-6-101	New section
A.A.C. R14-6-102	New section
A.A.C. R14-6-103	New section
A.A.C. R14-6-104	New section
A.A.C. R14-6-106	New section
A.A.C. R14-6-201	New section
A.A.C. R14-6-202	New section
A.A.C. R14-6-203	New section
A.A.C. R14-6-204	New section
A.A.C. R14-6-205	New section
A.A.C. R14-6-206	New section
A.A.C. R14-6-207	New section
A.A.C. R14-6-208	New section
A.A.C. R14-6-209	New section
A.A.C. R14-6-210	New section
A.A.C. R14-6-211	New section
A.A.C. R14-6-212	New section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 44-3131

Implementing statute: A.R.S. §§ 44-1801, 44-3101, 44-3132, 44-3133, 44-3153, 44-3156, 44-3201, 44-3212, 44-3213, 44-3241, 44-3292, and 44-3296

Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13

3. A list of all previous notices appearing in the Arizona Administrative Register.

Notice of Rule Making Docket Opening 4 A.A.R. 1290, June 5, 1998

Notice of Rule Making Docket Opening 5 A.A.R. 623, February 26, 1999

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cheryl T. Farson, Associate General Counsel

Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996

Phone: (602) 542-4242

Fax Number: (602) 594-7470

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Arizona Corporation Commission (the "Commission") proposes to repeal and replace Sections R14-6-101 through R14-6-104 and R14-6-201 through R14-6-209 and to add new Sections R14-6-106 and R14-6-210 through R14-6-212 in order to: (i) correct technical errors within the Sections; (ii) reflect amendments to the United States Securities and Exchange Commission rules regarding the regulation of investment advisers and investment adviser representatives; (iii) provide for the distribution of information regarding products and services on the Internet; (iv) clarify the statutory definition of investment adviser representative; (v) prescribe parameters to the term "solicit" as used in the Arizona Investment Management Act adopted in

April 1994 (the "IM Act"); and (vi) clarify filing requirements for licensure and notice filings. A brief description of the Section covered by this rulemaking follows:

R14-6-101. Definitions: defines various terms used through the Sections.

R14-6-102. Scope of provisions: states the legal authority for the Sections, provides for the waiver of strict adherence to a provision, and provides that the Arizona Corporation Commission's rules of Practice and Procedure apply when not in conflict with the proposed Sections.

R14-6-103. Severability: establishes the severability of the Sections and the provisions thereof in case any Section or subsection is deemed to be invalid.

R14-6-104. Enforcement of the Arizona Investment Management Act: provides that the Sections relating to enforcement matters are Sections A.A.C. R14-4-301 through R14-4-308.

R14-6-106. General dissemination of information on the Internet: establishes the circumstances under which investment advisers and investment adviser representatives may distribute information regarding products and services on the Internet prior to licensure in Arizona.

R14-6-201. Books and records of investment advisers: requires investment advisers to comply with the provisions of the SEC's books and records rule; also requires the maintenance of certain additional records in separate files.

R14-6-202. Supervision: provides a safe harbor for investment advisers regarding their supervisory responsibilities by prescribing procedures for investment advisers to follow.

R14-6-203. Dishonest and unethical practices: provides guidance regarding which actions by investment advisers and investment adviser representatives will be construed to fall within the term "dishonest or unethical" for purposes of A.R.S. § 44-3201(A)(13).

R14-6-204. Written examination: requires each investment adviser who is an individual and each investment adviser representative to take and score at least 70% on the NASAA Series 65 or Series 66 examination and to either acquire and maintain one of the industry credentials listed in the Section or score at least 70% on the NASD Series 7 or Series 2 examination.

R14-6-205. Information to be furnished to clients ("Brochure Rule"): prescribes information that must be furnished to clients and the timing and method of such disclosure.

R14-6-206. Custody of client funds or securities by investment advisers: provides that it is a fraudulent practice under the IM Act for an investment adviser to fail to comply with the procedures prescribed in the Section when maintaining custody of a client's funds or securities.

R14-6-207. Suitability of investment advisory services: provides that it is a fraudulent practice under the IM Act for an investment adviser to fail to provide suitable investment advice based on a reasonable inquiry of the client's financial situation, investment experience, and investment objectives.

R14-6-208. Advertisements by investment advisers or investment adviser representatives: provides that it is a fraudulent practice under the IM Act for an investment adviser or investment adviser representative to fail to comply with the limitations on advertising and the requirements prescribed in the Section.

R14-6-209. Financial and disciplinary information that investment advisers shall disclose to clients: provides that it is a fraudulent practice for an investment adviser to fail to disclose to any client or prospective client all material facts with respect to (1) a financial condition that is reasonably likely to impair the adviser's ability to meet contractual commitments to clients where the adviser has discretionary authority, custody, or requires prepayments of fees, (2) a legal or

disciplinary event that is material to the evaluation of the adviser's integrity or ability to meet contractual commitments to clients, or (3) a failure to comply with an arbitration award.

R14-6-210. Licensure of investment adviser representatives: provides the circumstances under which investment adviser representatives who are employed by federally registered investment advisers must be licensed in Arizona. Also provides that a person employing investment adviser representatives who solicit on behalf of another investment adviser must license as an investment adviser.

R14-6-211. Solicitation: defines the activities that do not constitute solicitation for purposes of A.R.S. § 44-3101(3)(d).

R14-6-212. Filing requirements: enumerates the specific filing requirements for licensure, notice filings, and renewal of licensure and notice filings.

6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material.

None.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Not applicable.

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: June __, 1999

Time: _____ a.m.

Location: Arizona Corporation Commission
1200 West Washington Avenue
Phoenix, Arizona 85007

Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will take final action at an open meeting with respect to the making of the proposed rule.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

17 CFR 275.204.2 (1998)

A.A.C. R14-6-101(B)(16)

13. The full text of the rule follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS
AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 6. CORPORATION COMMISSION--INVESTMENT MANAGEMENT

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA
INVESTMENT MANAGEMENT ACT

~~R14-6-101. Definitions~~

~~R14-6-102. Scope of Rules~~

~~R14-6-103. Severability~~

~~R14-6-104. Enforcement of the Arizona Investment Management Act~~

R14-6-101. Definitions

R14-6-102. Scope of provisions

R14-6-103. Severability

R14-6-104. Enforcement of the Arizona Investment Management Act

R14-6-106. General dissemination of information on the Internet

ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND
INVESTMENT ADVISER REPRESENTATIVES

~~R14-6-201. Books and Records of Investment Advisors~~

~~R14-6-202. Supervision~~

~~R14-6-203. Dishonest and Unethical Practices~~

~~R14-6-204. Written Examination~~

~~R14-6-205. Information to be Furnished to Clients ("Brochure Rule")~~

~~R14-6-206. Custody of Client Funds or Securities by Investment Advisors~~

~~R14-6-207. Suitability of Investment Advisory Services~~

~~R14-6-208. Advertisements by Investment Advisors or Investment Advisor Representatives~~

~~R14-6-209. Financial and Disciplinary Information that Investment Advisors Must Disclose to~~
Clients

- R14-6-201. Books and records of investment advisers
- R14-6-202. Supervision
- R14-6-203. Dishonest and unethical practices
- R14-6-204. Written examination
- R14-6-205. Information to be furnished to clients ("Brochure Rule")
- R14-6-206. Custody of client funds or securities by investment advisers
- R14-6-207. Suitability of investment advisory services
- R14-6-208. Advertisements by investment advisers or investment adviser representatives
- R14-6-209. Financial and disciplinary information that investment advisers shall disclose to clients
- R14-6-210. Licensure of investment adviser representatives
- R14-6-211. Solicitation
- R14-6-212. Filing requirements

~~ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA
INVESTMENT MANAGEMENT ACT~~

~~R14-6-101. Definitions~~

~~A. The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 shall apply to the rules promulgated under Chapter 13.~~

~~B. The following definitions shall apply to all rules promulgated under Chapter 13 unless the context otherwise requires:~~

~~1. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.~~

~~2. "Advertisement" means, except as set forth in subsections (d) and (e), any notice, circular, letter, or other written, oral, or electronically generated communication addressed to or reasonably designed by the investment adviser or investment adviser representative to be accessed by more than 1 person, or any notice or other announcement in any publication or by radio or television, which directly or indirectly offers:~~

~~a. Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or~~

~~b. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or~~

~~c. Any other investment advisory service with regard to securities; or~~

~~d. A communication over a computer on-line service including, but not limited to, an electronic bulletin board shall not be deemed to be an advertisement when an investment adviser or an investment adviser representative is either:~~

- ~~i. Engaged in a discussion regarding securities and does not receive compensation from any person for the discussion; or~~
 - ~~ii. Responds to unsolicited inquiries regarding the provision of investment advisory services.~~
- ~~e. A communication by 1 or more investment advisers or investment adviser representatives shall not be deemed to be an advertisement when the communication is addressed solely to or is reasonably designed to be accessed solely by other investment advisers or investment adviser representatives.~~
- ~~3. "Certified public accountant" or "CPA" means an accountant who has been registered or licensed to practice public accounting and is permitted to use the title "certified public accountant" and use the initials "CPA" after the accountant's name.~~
- ~~4. "Chapter 13" means A.R.S. Title 44, Chapter 13.~~
- ~~5. "Commodity Exchange Act" means 7 U.S.C. 1 et seq. (1988 & Supp. V 1993), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of the Commodity Exchange Act are available from the Securities Division of the Corporation Commission and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~
- ~~6. "Division" means the Securities Division of the Corporation Commission.~~
- ~~7. "Fixed fee basis" means an investment advisory fee which at any given time can be precisely established in dollar amount without regard to the investment performance or value of an account and which is not based on the purchase or sale of specific securities.~~
- ~~8. "Form ADV" means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1 (1994) (Form amended at 59 FR 21657 (1994) and 59 FR 27659 (1994)),~~

~~which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Form ADV are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~

9. ~~"Impersonal advisory services" means investment advisory services provided solely:~~
- ~~a. By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;~~
 - ~~b. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or~~
 - ~~c. Any combination of the foregoing services.~~
10. ~~"NASAA" means the North American Securities Administrators Association, Inc. or any successor organization.~~
11. ~~"NASD" means the National Association of Securities Dealers, Inc. or any successor organization.~~
12. ~~"Relative" means any relationship by blood, marriage, or adoption, not more remote than 1st cousin.~~
13. ~~"Rule 204-2" means United States Securities and Exchange Commission Rule 204-2, 17 CFR 275.204.2 (1994), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Rule 204-2 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~
14. ~~"Rule 204-3" means United States Securities and Exchange Commission Rule 204-3, 59 FR 21661 (1994) (to be codified at 17 CFR 275.204.3), which is incorporated by~~

~~reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Rule 204-3 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~

~~15. "SEC" means United States Securities and Exchange Commission.~~

~~16. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 et seq.~~

~~17. "Unincorporated organization" includes a limited liability company for purposes of the definition of "person," as defined in A.R.S. § 44-1801(13).~~

~~R14-6-102. Scope of this Article~~

~~The following rules are adopted by the Commission under the authority granted pursuant to Chapter 13. All rules shall be generally applicable to the administration of the IM Act but the Commission may at any time abrogate or waive strict adherence to any particular rule in any specific instance where the Commission may deem it advisable for the equitable administration of the law. When not in conflict with these rules, the applicable provisions of A.A.C. R14-3-101 through R14-3-113 also shall apply.~~

~~R14-6-103. Severability~~

~~The provisions of the rules promulgated under Chapter 13 are severable. If any provision of a rule is held to be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision.~~

~~R14-6-104. Enforcement of the Arizona Investment Management Act~~

~~The rules relating to investigations and examinations conducted pursuant to and orders issued under the IM Act are contained at A.A.C. R14-4-301 through R14-4-308.~~

~~ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND~~

INVESTMENT ADVISER REPRESENTATIVES

~~R14-6-201. Books and Records of Investment Advisers~~

- ~~A. Each investment adviser shall make, maintain, and preserve books and records in compliance with Rule 204-2. The investment adviser shall concurrently file with the Commission a copy of any notices or written undertakings required to be filed with the SEC under Rule 204-2.~~
- ~~B. To the extent that the SEC amends Rule 204-2, investment advisers in compliance with Rule 204-2 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the amended Rule 204-2.~~
- ~~C. As of the effective date of this Section, each investment adviser shall make, maintain, and preserve for at least 5 years the following additional books and records:~~
- ~~1. A file containing each customer complaint received relating to advisory activities conducted by the investment adviser, its investment advisory representatives, or its employees, and all correspondence relating to such complaint;~~
 - ~~2. A file containing all advertisements used by the investment adviser or any investment adviser representative, including any radio or television transcripts and advertisements placed on computer or electronic bulletin boards;~~
 - ~~3. In each client file, all correspondence received or sent by the investment adviser, any investment adviser representative, or any employee, that relates to any client account, securities, or funds.~~
- ~~D. Books and records that are required to be maintained pursuant to subsection (A) shall be available for inspection by the Commission in accordance with the provisions of Rule 204-2.~~

~~Books and records that are required to be maintained pursuant to subsection (C) shall be readily accessible and may be preserved in accordance with Rule 204-2(g).~~

~~R14-6-202. Supervision~~

~~For purposes of A.R.S. § 44-3201(A)(12), no investment adviser shall be deemed to have failed to reasonably supervise its investment adviser representatives or employees if:~~

- ~~1. There have been established and maintained written procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any violation by such investment adviser representatives or employees of the IM Act, or any rule adopted thereunder; and~~
- ~~2. Such investment adviser has reasonably discharged the duties and obligations incumbent upon it by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.~~

~~R14-6-203. Dishonest and Unethical Practices~~

~~"Dishonest and unethical practices", with respect to investment advisers and investment adviser representatives under A.R.S. § 44-3201(A)(13) shall include, but not be limited to, the following:~~

- ~~1. Refusing to allow or otherwise impeding designees of the Commission from conducting an investigation or examination under the IM Act or any rule adopted thereunder;~~
- ~~2. Placing an order to purchase or sell a security for the account of a client without authority to do so;~~
- ~~3. Placing an order to purchase or sell a security for the account of a client upon instruction of a 3rd party without first obtaining a written 3rd party trading authorization from the client;~~

4. ~~Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both;~~
5. ~~Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;~~
6. ~~Borrowing money or securities from a client or client's account unless the client is a dealer, an affiliate, or relative of the investment adviser or investment adviser representative, or a financial institution or other entity engaged in the business of loaning funds or securities;~~
7. ~~Loaning money to a client unless the investment adviser or investment adviser representative is a financial institution or other entity engaged in the business of loaning funds or the client is an affiliate or relative of the investment adviser or investment adviser representative;~~
8. ~~Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, the investment adviser representative, or an employee, or misrepresenting the nature of the investment advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they were made, not misleading;~~
9. ~~Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact.~~
~~This prohibition does not apply to a situation where the investment adviser or~~

- ~~investment adviser representative uses published research reports or statistical analyses to render investment advice or where the investment adviser or investment adviser representative orders such a report in the ordinary course of providing service;~~
- ~~10. Charging a client an investment advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser or the investment adviser representative, the sophistication and bargaining power of the client, and whether the investment adviser has disclosed that lower fees for comparable services may be available from other sources;~~
- ~~11. Failing to disclose to a client in writing before entering into or renewing an investment advisory agreement with that client, or before any investment advice is rendered, any material conflict of interest relating to the investment adviser, the investment adviser representative, or an employee which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:~~
- ~~a. Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for those services; and~~
- ~~b. Charging a client an investment advisory fee for rendering investment advice without disclosing that compensation for executing securities transactions pursuant to such investment advice will be received by the investment adviser, the investment adviser representative, or an employee;~~
- ~~12. Promising or guaranteeing a client that a gain, loss, or other outcome will be achieved as a result of the investment advice;~~
- ~~13. Disclosing the identity, affairs, or investments of a client to any 3rd party unless required by law to do so, or unless consented to by the client;~~

- ~~14. With respect to any client initially retained after the effective date of this rule, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance, and of any grant of discretionary power to the investment adviser;~~
- ~~15. With respect to any client initially retained after the effective date of this rule, entering into, extending, modifying, or renewing any investment advisory contract without disclosing, in writing to the client, any affirmative answers to disciplinary questions numbered 11A and 11K in Part I of the Form ADV;~~
- ~~16. Entering into, extending, modifying, or renewing any investment advisory contract which allows the assignment of such contract by the investment adviser without the prior written consent of the client;~~
- ~~17. Committing any act that results in denial, revocation, or suspension of a license or registration relating to securities by an agency of any state, where such denial, revocation or suspension arises out of any scheme, act, practice or course of business that operates or would operate as a fraud or deceit, or arises out of a violation of Article 13 of the Securities Act or the rules promulgated thereunder; and~~
- ~~18. For any investment adviser to, in any manner, request, or require, in any contract, agreement, or otherwise, any condition, stipulation, or provision binding on any person~~

~~to waive compliance with any provision of the IM Act or the rules thereunder. Any such waiver shall be void.~~

~~R14-6-204. Written Examination~~

~~A. Prior to licensure, except as provided in subsection (B), each investment adviser who is an individual and each investment adviser representative, each of whom is hereafter referred to as an "applicant," must take and receive a score of at least 70% on:~~

- ~~1. The NASAA Series 65 Uniform Investment Adviser State Law Examination or Series 66 Combined State Law Examination; and~~
- ~~2. The NASD Series 7 General Securities Registered Representative Examination or Series 2 General Securities Representative (Non-member) Examination.~~

~~B. The examinations described in subsection (A)(2) shall not be required of an applicant who has completed and maintains 1 of the following credentials:~~

- ~~1. Certified Financial Planner (CFP) designation awarded by the Certified Financial Planner Board of Standards, Inc.;~~
- ~~2. Chartered Financial Analyst (CFA) designation awarded by the Institute of Chartered Financial Analysts;~~
- ~~3. Chartered Financial Consultant (ChFC) designation awarded by the American College, Bryn Mawr, Pennsylvania;~~
- ~~4. Chartered Investment Counselor (CIC) designation awarded by the Investment Counsel Association of America, Inc.; or~~
- ~~5. Personal Financial Specialist (PFS) designation awarded by the American Institute of Certified Public Accountants.~~

~~C. In the event that the NASAA or NASD Series examination numbers change, the most current examination series deemed applicable by the Commission to the category of licensure shall apply.~~

~~D. In the event that the title changes for any of the credentials designated in subsection (B), the title deemed applicable by the Commission shall apply.~~

~~R14-6-205. Information to be Furnished to Clients ("Brochure Rule")~~

~~A. Each investment adviser shall comply with the provisions of Rule 204-3.~~

~~B. To the extent that the SEC amends Rule 204-3, investment advisers in compliance with Rule 204-3 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the amended Rule 204-3.~~

~~R14-6-206. Custody of Client Funds or Securities by Investment Advisers~~

~~It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to take or have custody of any securities or funds of any client unless:~~

- ~~1. The investment adviser notifies the Commission in writing that the investment adviser has or may have custody of client funds or securities. Such notification may be given on Form ADV;~~
- ~~2. The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss;~~
- ~~3. All client funds are deposited in 1 or more bank or similar accounts containing only clients' funds, such accounts are maintained in the name of the investment adviser as~~

~~agent or trustee for such clients, and the investment adviser maintains a separate record for each such account showing the name and address of the bank or similar institution where the account is maintained, the dates and amounts of deposits into and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;~~

- ~~4. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and, subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives prompt (but in no event more than 10 business days) written notice thereof to the client;~~
- ~~5. At least once every 3 months, the investment adviser sends each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of such period and all debits, credits, and transactions in the client's account during such period; and~~
- ~~6. At least once every calendar year, an independent CPA or public accountant verifies all client funds and securities by actual examination at a time chosen by the independent CPA or public accountant without prior notice to the investment adviser. The independent CPA's or public accountant's report stating that such CPA or public accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission promptly (but in no event more than 30 days) after each such examination.~~

~~R14-6-207. Suitability of Investment Advisory Services~~

~~It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any person providing investment advisory services to provide investment advisory services to any client, other than in connection with impersonal advisory services, unless the person:~~

- ~~1. Before providing any investment advisory services, and as appropriate thereafter, makes a reasonable inquiry of the client as to the financial situation, investment experience, and investment objectives of the client; and~~
- ~~2. Reasonably determines that the investment advisory services are suitable for the client based upon the information obtained from the client in accordance with subsection (1) above.~~

~~R14-6-208. Advertisements by Investment Advisers or Investment Adviser Representatives~~

~~A. It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement:~~

- ~~1. Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser; or~~
- ~~2. Which refers, directly or indirectly, to past specific recommendations of such investment adviser or investment adviser representative which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser or investment adviser representative within the immediately preceding period of not less than 1 year if such advertisement, and such list if it is furnished separately.~~

- a. ~~States the name of each such security recommended, the date and nature of each such recommendation (for example, whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and~~
- b. ~~Contains the following cautionary legend on the 1st page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list;" or~~
3. ~~Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making his or her own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or~~
4. ~~Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or~~
5. ~~Which states that the Commission has approved any advertisement.~~
- B. ~~When requested by the Commission, any advertisement used directly or indirectly in connection with the provision of investment advisory services shall be filed with the Commission at least 10 business days prior to its proposed use.~~

~~C. Any advertisement that has been requested by the Commission pursuant to the provisions of subsection (B) but that has not been filed with the Commission shall not be used.~~

~~R14-6-209. Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients~~

~~A. The following definitions shall apply to this Section:~~

- ~~1. "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or fiduciary).~~
- ~~2. "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.~~
- ~~3. "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser which is a company or to determine the general investment advice given to clients.~~
- ~~4. "Self-regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.~~

~~B. It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:~~

- ~~1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over such~~

~~client's funds or securities, or requires prepayment of advisory fees of more than \$500 from such client, 6 months or more in advance; or~~

~~2. A legal or disciplinary event that is material to an evaluation of the investment adviser's integrity or ability to meet contractual commitments to clients.~~

~~C. It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser or a management person of the investment adviser (any of the foregoing being referred to hereafter as a "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subsection (B)(2) for a period of 10 years from the time of the event. No affirmative or negative presumption of materiality shall be created under subsection (B)(2) for events not specifically set forth in this subsection.~~

~~1. A criminal or civil action in a court of competent jurisdiction in which the person:~~

~~a. Was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;~~

~~b. Was found to have been involved in a violation of an investment-related statute or rule; or~~

~~c. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.~~

~~2. Administrative proceeding before the Securities and Exchange Commission, the Commission, or any federal regulatory agency or any state agency (any of the foregoing being referred to hereafter as "agency") in which the person:~~

~~a. Was found to have caused an investment-related business to lose its authorization to do business; or~~

~~b. Was found to have been involved in a violation of an investment-related statute or rule, and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.~~

~~3. Self-regulatory Organization ("SRO") proceedings in which the person:~~

~~a. Was found to have caused an investment-related business to lose its authorization to do business; or~~

~~b. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than \$2,500; or otherwise significantly limiting the person's investment-related activities.~~

~~D. The information required to be disclosed by subsection (B) shall be disclosed to clients promptly but in no event later than 30 days after the occurrence of the event requiring disclosure, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract~~

~~if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.~~

- ~~E. For purposes of calculating the 10-year period during which events are presumed to be material under subsection (C), the date of the reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.~~
- ~~F. Compliance with subsection (C) shall not relieve any investment adviser from the disclosure obligations of subsection (B); compliance with subsection (B) shall not relieve any investment adviser from any other disclosure requirement under the Act, the rules thereunder, or under any other state or federal law. Note: Investment advisers may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under R14-6-205, provided, that the delivery of the brochure satisfies the timing of disclosure requirements described in subsection (D).~~

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA
INVESTMENT MANAGEMENT ACT

R14-6-101. Definitions

- A. The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 shall apply to the rules promulgated under A.R.S. title 44, chapter 13.
- B. The following definitions shall apply to all rules promulgated under A.R.S. title 44, chapter 13, unless the context otherwise requires:
 - 1. "Advertisement" means, except as set forth in subsections (d) and (e), any notice, circular, letter, or other written, oral, or electronically generated communication addressed to or reasonably designed by the investment adviser or investment adviser representative to be accessed by more than 1 person, or any notice or other announcement in any publication or by radio or television, that directly or indirectly offers:
 - a. Any analysis, report, or publication that either concerns securities, or is to be used in making any determination as to when to buy or sell any security or which security to buy or sell; or
 - b. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
 - c. Any other investment advisory service with regard to securities; or
 - d. A communication over a computer on-line service including but not limited to an electronic bulletin board shall not be deemed to be an advertisement when an investment adviser or an investment adviser representative is either:

- i. Engaged in a discussion regarding securities and does not receive compensation from any person for the discussion; or
 - ii. Responds to unsolicited inquiries regarding the provision of investment advisory services.
 - e. A communication by 1 or more investment advisers or investment adviser representatives shall not be deemed to be an advertisement when the communication is addressed solely to or is reasonably designed to be accessed solely by other investment advisers or investment adviser representatives.
2. "Certified public accountant" or "CPA" means an accountant who has been registered or licensed to practice public accounting and is permitted to use the title "certified public accountant" and to use the initials "CPA" after the accountant's name.
 3. "Federal covered adviser" means an investment adviser registered under the investment advisers act of 1940.
 4. "Fixed fee basis" means an investment advisory fee that at any given time can be precisely established in a dollar amount without regard to the investment performance or value of an account and that is not based on the purchase or sale of specific securities.
 5. "Form ADV" means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1.
 6. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.*
 7. "Impersonal advisory services" means investment advisory services provided solely:

- a. By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;
 - b. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
 - c. Any combination of the foregoing services.
- 8. "Internet" means all proprietary or common carrier electronic systems, or similar media.
 - 9. "Internet communication" means the distribution of information on the Internet.
 - 10. "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate, including but not limited to acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or fiduciary.
 - 11. "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.
 - 12. "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.
 - 13. "NASAA" means the North American Securities Administrators Association, Inc., or any successor organization.
 - 14. "NASD" means the National Association of Securities Dealers, Inc., or any successor or subsidiary organization.
 - 15. "Relative" means any relationship by blood, marriage, or adoption, not more remote than 1st cousin.

16. "Rule 204-2" means United States securities and exchange commission rule 204-2, 17 CFR 275.204.2 (1998), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the office of the secretary of state. Copies of Rule 204-2 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
17. "SEC" means United States Securities and Exchange Commission.
18. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*
19. "Self-regulatory organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.
20. "Unincorporated organization" includes a limited liability company for purposes of the definition of "person," as defined in A.R.S. § 44-1801.
21. "Wrap fee program" means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services, which may include portfolio management or advice concerning the selection of other investment advisers, and execution of client transactions.

R14-6-102. Scope of provisions

The following Sections are adopted by the Commission under the authority granted pursuant to A.R.S. title 44, chapter 13. Such Sections shall be generally applicable to the administration of the IM Act, but the Commission may at any time abrogate or waive strict adherence to any particular provision when the Commission deems it advisable for the equitable administration of the law. When not in conflict with these Sections, the applicable provisions of A.A.C. R14-3-101 through R14-3-113 also shall apply.

R14-6-103. Severability

The provisions of the Sections promulgated under A.R.S. title 44, chapter 13, are severable. If any provision of a Section is held to be invalid, such invalidity shall not affect other provisions that can be given effect without the invalid provision.

R14-6-104. Enforcement of the Arizona Investment Management Act

The provisions relating to investigations and examinations conducted pursuant to and orders issued under the IM Act are contained at A.A.C. R14-4-301 through R14-4-308.

R14-6-106. General dissemination of information on the Internet

A. Investment advisers and investment adviser representatives who use the Internet to distribute information on products and services directed generally to anyone having access to the Internet shall not be deemed to be transacting business in Arizona for purposes of Article 4 of the IM Act based solely on that activity if the following conditions are observed:

1. The Internet communication includes clear and prominent statements that:
 - a. The investment adviser or investment adviser representative may only transact business in Arizona if first compliant with or exempt from licensure or notice filing requirements.
 - b. The investment adviser or investment adviser representative may only communicate with persons in Arizona individually about effecting or attempting to effect transactions in securities, rendering investment advice for compensation, or soliciting or negotiating for the sale of investment advisory services if first compliant with or exempt from licensure or notice filing requirements.
2. The investment adviser or investment adviser representative complies with the statements contained in the Internet communication under subsection (A)(1).

3. The Internet communication is subject to a mechanism, policy, or procedure reasonably designed to ensure that, prior to any subsequent, direct communication with prospective customers or clients in Arizona, the investment adviser or investment adviser representative is first compliant with or exempt from the licensure or notice filing requirements of the IM Act.
4. The Internet communication does not involve either effecting or attempting to effect transactions in securities, the rendering of investment advice for compensation, or individualized solicitation or negotiations for the sale of investment advisory services in Arizona.
5. In the case of an investment adviser representative:
 - a. The affiliation with an investment adviser is prominently disclosed in the Internet communication.
 - b. The investment adviser with whom the investment adviser representative is associated first authorizes the Internet communication.
 - c. The investment adviser with whom the investment adviser representative is associated retains responsibility for reviewing and approving the content of any Internet communication.
 - d. In distributing information through the Internet, the investment adviser representative acts within the scope of the authority granted by the investment adviser.

- B. Compliance with this Section relieves the investment adviser or investment adviser representative of licensure or notice filing requirements only. The investment adviser or investment adviser representative are subject to Article 9 of the IM Act and related regulations.

ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND
INVESTMENT ADVISER REPRESENTATIVES

R14-6-201. Books and records of investment advisers

- A. Except as provided in subsection (G), each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve books and records in accordance with the requirements imposed on federal covered advisers under rule 204-2. The investment adviser shall file with the Commission a copy of any notices or written undertakings required to be filed by federal covered advisers with the SEC under rule 204-2.
- B. To the extent that the SEC amends rule 204-2, investment advisers in compliance with the requirements contained in rule 204-2 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the requirements contained in the amended rule 204-2.
- C. Except as provided in subsection (G), each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve for at least 5 years the following additional books and records:
1. A file containing each customer complaint received relating to advisory activities conducted by the investment adviser, its investment advisory representatives, or its employees, and all correspondence relating to such complaint.

2. A file containing all advertisements used by the investment adviser or any investment adviser representative, including any radio or television transcripts and advertisements placed on computer or electronic bulletin boards.
 3. In each client file, all correspondence received or sent by the investment adviser, any investment adviser representative, or any employee, that related to any client account, securities, or funds.
- D. Books and records that are required to be maintained pursuant to subsection (A) shall be available for inspection by the Commission in accordance with the provisions of rule 204-2. Books and records that are required to be maintained pursuant to subsection (C) shall be readily accessible and may be preserved in accordance with rule 204-2(g). Notwithstanding other record preservation requirements of this Section, the following records or copies shall be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:
1. Records required to be preserved under rule 204-2(a)(3), (a)(7) through (10), (a) (14) through (15), (b), and (c).
 2. Records required to be preserved under subsection (C) of this Section.
- E. A record made and kept under a provision of subsections (A) or (C) that contains all of the information required under any other provision of subsections (A) or (C) in a readily accessible format need not be maintained in duplicate in order to meet the requirements of the other provision.
- F. Any book or other record made, kept, maintained, and preserved in compliance with A.A.C. R14-4-132 that is substantially the same as the book or other record required to be made,

kept, maintained, and preserved under this Section shall be deemed to be made, kept, maintained, and preserved in compliance with this Section.

- G. Every investment adviser licensed or required to be licensed in Arizona that has its principal place of business in a state other than Arizona shall be exempt from the requirements of this Section, provided the investment adviser is licensed in such other state and is in compliance with that state's recordkeeping requirements.

R14-6-202. Supervision

For purposes of A.R.S. § 44-3201(A)(12), no investment adviser shall be deemed to have failed to reasonably supervise its investment adviser representatives or employees if:

1. The investment adviser has established and maintained written procedures, and a system for applying such procedures, that reasonably may be expected to prevent and detect, insofar as practicable, any violation of the IM Act or any rule adopted thereunder by such investment adviser representatives or employees; and
2. Such investment adviser has discharged reasonably the duties and obligations incumbent upon it by reason of such procedures and system without reasonable cause to believe that the investment adviser representatives or employees are not complying with such procedures and system.

R14-6-203. Dishonest and unethical practices

- A. Except as otherwise provided in subsection (B), "dishonest and unethical practices," with respect to investment advisers and investment adviser representatives under A.R.S. § 44-3201(A)(13), shall include but not be limited to the following:
1. Refusing to allow or otherwise impeding the Commission from conducting an investigation or examination under the IM Act or any rule adopted thereunder.

2. Placing an order to purchase or sell a security for the account of a client without authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a 3rd party without first obtaining a written 3rd-party trading authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.
6. Borrowing money or securities from a client or client's account unless the client has authorized the borrowing in writing and is a dealer, an affiliate, or relative of the investment adviser or investment adviser representative, or a financial institution or other entity engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment adviser or investment adviser representative is a financial institution or other entity engaged in the business of loaning funds or the client is an affiliate or relative of the investment adviser or investment adviser representative.
8. Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, the investment adviser representative, or an employee, or misrepresenting the nature of the investment advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made

regarding qualifications, services, or fees, in light of the circumstances under which they were made, not misleading.

9. Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact.

This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render investment advice or where the investment adviser or investment adviser representative orders such a report in the ordinary course of providing service.

10. Charging a client an investment advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser or the investment adviser representative, and the sophistication and bargaining power of the client.

11. Failing to disclose to a client in writing before entering into or renewing an investment advisory agreement with that client, or before any investment advice is rendered, any material conflict of interest relating to the investment adviser, the investment adviser representative, or an employee that could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:

- a. Compensation arrangements connected with investment advisory services to clients that are in addition to compensation from such clients for those services; and
- b. Charging a client an investment advisory fee for rendering investment advice without disclosing that compensation for executing securities transactions pursuant to such investment advice will be received by the investment adviser, the investment adviser representative, or an employee.

12. Guaranteeing a client that a gain, loss, or other outcome will be achieved as a result of the investment advice.
13. Disclosing the identity, affairs, or investments of a client to any 3rd party unless required by law to do so or consented to by the client.
14. With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or nonperformance, and that grant of any discretionary power to the investment adviser.
15. With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract without disclosing, in writing to the client, any affirmative answers to disciplinary questions numbered 11A and 11K in Part I of the Form ADV.
16. Entering into, extending, modifying, or renewing any investment advisory contract that allows the assignment of such contract by the investment adviser without the prior written consent of the client.
17. Committing any act that results in denial, revocation, or suspension by an agency of any state of a license or registration relating to securities, where such denial, revocation, or suspension arises out of any scheme, act, practice, or course of business that operates or

would operate as fraud or deceit, or arises out of a violation of Article 13 of the Securities Act or the rules promulgated thereunder.

18. Failing to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. title 44, chapter 12.

19. Requesting or requiring any person to waive compliance with any provision of the IM Act or the rules thereunder. Any such waiver shall be void.

B. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-204. Written examination

A. Prior to licensure, except as provided in subsection (B), each investment adviser who is an individual and each investment adviser representative shall take and receive a score of at least 70% on:

1. The NASAA Series 65 Uniform Investment Adviser State Law Examination or Series 66 Combined State Law Examination; and
2. The NASD Series 7 General Securities Registered Representative Examination or Series 2 General Securities Representative (Nonmember) Examination.

B. The examinations described in subsection (A)(2) shall not be required of an investment adviser or an investment adviser representative who has completed and maintains 1 of the following credentials:

1. Certified Financial Planner (CFP) designation awarded by the Certified Financial Planner Board of Standards, Inc.

2. Chartered Financial Analyst (CFA) designation awarded by the Institute of Chartered Financial Analysts.
 3. Chartered Financial Consultant (ChFC) designation awarded by the American College, Bryn Mawr, Pennsylvania.
 4. Chartered Investment Counselor (CIC) designation awarded by the Investment Counsel Association of America, Inc.
 5. Personal Financial Specialist (PFS) designation awarded by the American Institute of Certified Public Accountants.
- C. In the event that the NASAA or NASD Series examination numbers change, the most current examination series deemed applicable by the Commission to the category of licensure shall apply.
- D. In the event that the title changes for any of the credentials designated in subsection (B), the title deemed applicable by the Commission shall apply.

R14-6-205. Information to be furnished to clients ("Brochure Rule")

- A. Each investment adviser licensed or required to be licensed under the IM Act shall furnish each client and prospective client with a written disclosure statement that may be either a copy of Part II of its Form ADV or a written document containing at least the information required by Part II of Form ADV.
- B. The information required to be disclosed by subsection (A) shall be disclosed to clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.

- C. An investment adviser need not deliver the statement required by subsection (A) in connection with entering into an investment company contract or a contract for impersonal advisory services. The investment adviser shall, however, offer in writing to deliver the statement within 7 business days upon receipt of a written request.
- D. Without charge and to each of its clients, an investment adviser licensed or required to be licensed under the IM Act shall deliver annually within 7 business days upon receipt of a written request or offer in writing to deliver the statement required by this Section.
- E. If an investment adviser licensed or required to be licensed under the IM Act renders substantially different types of investment advisory services to different clients, any information required by Part II of Form ADV may be omitted from the statement furnished to the client or prospective client if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.
- F. Nothing in this Section shall relieve any investment adviser from any obligation pursuant to any provision of the IM Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this Section.
- G. An investment adviser licensed or required to be licensed under the IM Act that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the programs, shall, in lieu of the written disclosure statement required by subsection (A) and in accordance with the other subsections of this Section, furnish each client and prospective client of the wrap fee program with a written disclosure statement

containing at least the information required by Schedule H of Form ADV. Any additional information included in such disclosure shall be limited to information concerning wrap fee programs sponsored by the investment adviser.

- H. If the investment adviser is required under subsection (G) to furnish disclosure statements to clients or prospective clients of more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.
- I. An investment adviser need not furnish the written disclosure statement required by subsection (G) to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

R14-6-206. Custody of client funds or securities by investment advisers

- A. Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 14-3241(A)(4) for any investment adviser to take or have custody of any securities or funds of any client unless:
 - 1. The investment adviser notifies the Commission in writing that the investment adviser has or may have custody of client funds or securities. Such notification may be given on Form ADV.
 - 2. The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss.

3. All client funds are deposited in 1 or more bank or similar accounts containing only clients' funds, such accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and the investment adviser maintains a separate record for each such account showing the name and address of the bank or similar institution where the account is maintained, the dates and amounts of deposits into and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.
4. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and, subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client within 10 business days.
5. At least once every 3 months, the investment adviser sends each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of such period and all debits, credits, and transactions in the client's account during such period.
6. At least once every calendar year, an independent CPA or public accountant verifies all client funds and securities by actual examination at a time chosen by the independent CPA or public accountant without prior notice to the investment adviser. The independent CPA's or public accountant's report stating that such CPA or public accountant has made an examination of such funds and securities, and describing the

nature and extent of the examination, shall be filed with the Commission within 30 calendar days after the examination.

- B. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-207. Suitability of investment advisory services

- A. Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any person to provide investment advisory services to any client, other than in connection with impersonal advisory services, unless the person:

1. Before providing any investment advisory services, and as appropriate thereafter, makes a reasonable inquiry of the client as to the financial situation, investment experience, and investment objectives of the client; and
2. Reasonably determines that the investment advisory services are suitable for the client based upon the information obtained from the client in accordance with subsection (1) above.

- B. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-208. Advertisements by investment advisers or investment adviser representatives

- A. Except as otherwise provided in subsection (D), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement:

1. Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.
2. Which refers, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser or investment adviser representative within the immediately preceding period of not less than 1 year if the investment adviser or investment adviser representative also furnishes:
 - a. The name of each security recommended, the date and nature of each recommendation (for example, whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security; and
 - b. The following legend on the 1st page in prominent print or type: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."
3. Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell

them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.

4. Which represents, directly or indirectly, that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.
 5. Which states that the Commission has approved any advertisement.
- B. When requested by the Commission, any advertisement used directly or indirectly in connection with the provision of investment advisory services shall be filed with the Commission at least 10 business days prior to its proposed use.
- C. Any advertisement that has been requested by the Commission pursuant to the provisions of subsection (B) but that has not been filed with the Commission shall not be used.
- D. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-209. Financial and disciplinary information that investment advisers shall disclose to clients

- A. Except as otherwise provided in subsection (F), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:
1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over the

client's funds or securities, or requires prepayment of advisory fees of more than \$500 from such client, 6 months or more in advance.

2. A legal or disciplinary event that is material to an evaluation of the investment adviser's or an investment adviser representative's integrity or ability to meet contractual commitments to clients.
3. A failure to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. title 44, chapter 12.

B. It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser, an investment adviser representative, or a management person of the investment adviser (any of the foregoing being referred to hereafter as a "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subsection (A)(2) for a period of 10 years from the time of the event. No affirmative or negative presumption of materiality shall be created under subsection (A)(2) for events not specifically set forth in this subsection.

1. A criminal or civil action in a court of competent jurisdiction in which the person:
 - a. Was convicted or pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
 - b. Was found to have been involved in a violation of an investment-related statute or rule; or

- c. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person or otherwise limiting the person from engaging in any investment-related activity.
- 2. An administrative proceeding before the SEC, the Commission, or any federal or state agency (any of the foregoing being referred to hereafter as "agency") in which the person:
 - a. Was found to have caused an investment-related business to lose its authorization to do business; or
 - b. Was found to have been involved in a violation of an investment-related statute or rule, and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.
- 3. SRO proceedings in which the person:
 - a. Was found to have caused an investment-related business to lose its authorization to do business; or
 - b. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than \$2,500; or otherwise significantly limiting the person's investment-related activities.
- C. The information required to be disclosed by subsection (A) shall be disclosed to clients within 30 calendar days after the occurrence of the event requiring disclosure, and to

prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.

- D. For purposes of calculating the 10-year period during which events are presumed to be material under subsection (B), the date of the reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.
- E. Compliance with subsection (B) shall not relieve any investment adviser from the disclosure obligations of subsection (A); compliance with subsection (A) shall not relieve any investment adviser from any other disclosure requirement under the IM Act, the rules thereunder, or under any other state or federal law. Investment advisers may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under R14-6-205, provided, that the delivery of the brochure satisfies the timing of disclosure requirements described in subsection (C).
- F. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-210. Licensure of investment adviser representatives

- A. The definition of investment adviser representative in A.R.S. § 44-1301 includes an individual employed by a federal covered adviser only if the individual has a place of business in Arizona and either:
 - 1. Is a supervised person and meets all of the following conditions:

- a. Has more than 5 clients who are natural persons, other than excepted persons.
- b. Has clients more than 10% of whom are natural persons, other than excepted persons.
- c. On a regular basis, solicits, meets with, or otherwise communicates with clients of the investment adviser or provides other than impersonal advisory services.

2. Is not a supervised person.

B. For purposes of this Section:

1. "Excepted person" means a natural person who:

- a. Immediately after entering into the investment advisory contract with the investment adviser has at least \$500,000 under management with the investment adviser, or
- b. The investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth, together with assets held jointly with a spouse, at the time the contract is entered into of more than \$1,000,000.

2. "Supervised person" means any partner, officer, director, or other person occupying a similar status or performing similar functions, or employees of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

3. "Place of business" means:

- a. An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients, or

R14-6-212. Filing requirements

- A. In addition to the items enumerated in A.R.S. § 44-3153(B), an application for licensure as an investment adviser shall include the following:
 - 1. A notarized affidavit of any officer, director, partner, member, trustee, or manager of the applicant stating:
 - a. That a review of the records of the investment adviser has been conducted.
 - b. Whether any investment adviser activity has been conducted with residents of Arizona prior to licensure as an investment adviser.
 - 2. If the applicant intends to have a branch office in Arizona, the address and name of a contact individual located at such branch.
- B. A notice filing shall include the items enumerated in A.R.S. § 44-3153(D).
- C. For purposes of A.R.S. § 44-3158(A), a license of an investment adviser or an investment adviser representative shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.
- D. For purposes of A.R.S. § 44-3153(E), a notice filing shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.

BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
Commissioner-Chairman
TONY WEST
Commissioner
CARL J. KUNASEK
Commissioner

In the matter of)
PROPOSED RULEMAKING) DOCKET NO. RS-00000A-98-0240
)
A.A.C. R14-6-101 *et seq.*)
UNDER THE INVESTMENT) DECISION NO. _____
MANAGEMENT ACT)
_____) **ORDER**

Open Meeting
March 30 and 31, 1999
Phoenix, AZ

BY THE COMMISSION:

INTRODUCTION

The Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") has recommended that the Commission repeal and replace the current rules (A.A.C. R14-6-101 through R14-6-209) under the Arizona Investment Management Act (the "IM Act"), as well as add four new rules (A.A.C. R14-6-106, R14-6-210, R14-6-211, and R14-6-212) to the IM Act.

FINDINGS

1. The Commission has promulgated rules A.A.C. R14-6-101 through R14-6-209 (the "IM Rules") to govern the administration of the IM Act.

2. The Division is recommending that the current IM Rules be repealed and replaced, as well as supplemented. The recommendation is intended to accomplish the following:

- a. Acknowledge, and conform with, certain provisions of the federal National Securities Markets Improvement Act of 1996 and rules promulgated thereunder by the Securities and Exchange Commission.

- b. Provide instruction for investment advisers and investment adviser representatives who wish to advertise on the Internet. (See A.A.C. R14-6-106)
- c. Clarify the statutory definition of "investment adviser representative." (See A.A.C. R14-6-210)
- d. Provide guidance concerning the term "solicit," as used in the IM Act. (See A.A.C. R14-6-211)
- e. Clarify the filing requirements for licensure and notice filing. (See A.A.C. R14-6-212)
- f. Make certain technical and grammatical changes.

3. In addition, the Division recommends that the current IM Rules be repealed and replaced (as opposed simply to amended) by new rules reflecting the proposed changes. The Division recommends the "repeal-replace" procedure because, when the IM Rules first were adopted, the Commission's procedures for Division rules did not include certification from the attorney general's office. The Commission now seeks approval from the attorney general's office for all Division rules, in accordance with A.R.S. § 41-1044. To reflect the Commission's current rulemaking practice concerning Division rules, a practice fully-endorsed by the Division, the Division believes that repealing and replacing the current IM Rules, rather than amending them, is the prudent procedural mechanism for effectively "amending" the current IM Rules.

4. The Division recommends that a notice of the proposed rulemaking be forwarded to the secretary of state. The Division also recommends that the Hearing Division schedule a hearing on the IM Rules on a date no earlier than May 31, 1999.

CONCLUSION OF LAW

The Commission has the authority for the proposed rulemaking under the Arizona Constitution Article XV §§ 4, 6, and 13, and under A.R.S. § 44-3131.

ORDER

THEREFORE IT IS ORDERED that a hearing be set by the Hearing Division on this matter at the Commission Offices in Phoenix, Arizona, on a date no earlier than May 31, 1999.

1 IT IS FURTHER ORDERED that the Division prepare a notice of the proposed rulemaking
2 and forward it to the office of the secretary of state for publication in the Arizona Administrative
3 Register.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6
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8 COMMISSIONER-CHAIRMAN

COMMISSIONER

COMMISSIONER

9
10 IN WITNESS WHEREOF, I, STUART R.
11 BRACKNEY, ACTING EXECUTIVE
12 SECRETARY OF THE ARIZONA
13 CORPORATION COMMISSION, HAVE
14 HEREUNTO SET MY HAND AND
15 CAUSED THE OFFICIAL SEAL OF THE
16 COMMISSION TO BE AFFIXED AT THE
17 CAPITOL, IN THE CITY OF PHOENIX,
18 THIS _____ DAY OF _____, 1999.

19
20 Stuart R. Brackney
21 Acting Executive Secretary

22
23
24
25
26
DISSENT

(ctf)